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Letter Ruling 98-16: Application of G.L. c. 63, s. 38(m) to Subsidiary of a Financial Institution

November 4, 1998

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***** (Corporation) is a publicly held bank holding company organized under Massachusetts law. Corporation plans to transfer its mutual fund service business to NewCo, a wholly owned subsidiary. NewCo will join in the Corporation's consolidated federal income tax return. NewCo will do business in Massachusetts and will receive more than fifty percent of its gross income from the provision of management, distribution, or administration services to regulated investment companies. You ask how NewCo must apportion its net income to Massachusetts.

Discussion

A "financial institution" includes any bank, banking association, or trust company existing by the authority of any law of Massachusetts, any corporation subject to G.L. c. 167A or registered under the Federal Bank Holding Company Act of 1956, including any subsidiary which participates in the filing of a consolidated return of income to the federal government. G.L. c. 63, § 1. In general, financial institutions must pay the financial institution excise "measured by its net income determined to be taxable under Section 2A." G.L. c. 63, § 2. Section 2A sets forth the apportionment formula that generally applies to financial institutions.

A mutual fund service corporation is defined as "any corporation doing business in the commonwealth which derives more than fifty percent of its gross income from the provision directly or indirectly of management, distribution or administration services to or on behalf of a regulated investment company and from trustees, sponsors and participants of employee benefit plans which have accounts in a regulated investment company." G.L. c. 63, § 38(m). "Notwithstanding any other provision of the General Laws," mutual fund service corporations that meet certain job growth criteria must apportion their taxable net income from mutual fund sales to Massachusetts according to a single sales factor formula. G.L. c. 63, § 38(m)(2).

Based on the facts you provided, NewCo falls within the definition of both a financial institution and a mutual fund service corporation. NewCo will therefore be subject to the financial institution excise on its net income as provided in Section 2. However, notwithstanding the provisions in Section 2, in determining the portion of net income from mutual fund sales that is taxable under Section 2, NewCo must use the apportionment provisions of G.L. c. 63, § 38(m) and not the apportionment provisions of Section 2A. NewCo must use the apportionment provisions of Section 2A to determine the portion of any other net income that is taxable under Section 2.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:RMH

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